

FIRST REGULAR SESSION

HOUSE BILL NO. 908

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HOLLINGSWORTH.

Read 1st time March 1, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

1599L.011

AN ACT

To repeal sections 211.031, 211.442 and 211.447, RSMo 2000, and to enact in lieu thereof three new sections relating to permanency in the placement of children.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 211.031, 211.442 and 211.447, RSMo 2000, are repealed and three
2 new sections enacted in lieu thereof, to be known as sections 211.031, 211.442 and 211.447, to
3 read as follows:

211.031. 1. Except as otherwise provided in this chapter, the juvenile court or the family
2 court in circuits that have a family court as provided in sections 487.010 to 487.190, RSMo, shall
3 have exclusive original jurisdiction in proceedings:

4 (1) Involving any child or person seventeen years of age who may be a resident of or
5 found within the county and who is alleged to be in need of care and treatment because:

6 (a) The parents, or other persons legally responsible for the care and support of the child
7 or person seventeen years of age, neglect or refuse to provide proper support, education which
8 is required by law, medical, surgical or other care necessary for his or her well-being; except that
9 reliance by a parent, guardian or custodian upon remedial treatment other than medical or
10 surgical treatment for a child or person seventeen years of age shall not be construed as neglect
11 when the treatment is recognized or permitted pursuant to the laws of this state;

12 (b) The child or person seventeen years of age is otherwise without proper care, custody
13 or support; or

14 (c) The child or person seventeen years of age was living in a room, building or other
15 structure at the time such dwelling was found by a court of competent jurisdiction to be a public

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

16 nuisance pursuant to section 195.130, RSMo;

17 (2) Involving any child who may be a resident of or found within the county and who is
18 alleged to be in need of care and treatment because:

19 (a) The child while subject to compulsory school attendance is repeatedly and without
20 justification absent from school; or

21 (b) The child disobeys the reasonable and lawful directions of his or her parents or other
22 custodian and is beyond their control; or

23 (c) The child is habitually absent from his or her home without sufficient cause,
24 permission, or justification; or

25 (d) The behavior or associations of the child are otherwise injurious to his or her welfare
26 or to the welfare of others; or

27 (e) The child is charged with an offense not classified as criminal, or with an offense
28 applicable only to children; except that, the juvenile court shall not have jurisdiction over any
29 child fifteen and one-half years of age who is alleged to have violated a state or municipal traffic
30 ordinance or regulation, the violation of which does not constitute a felony, or any child who is
31 alleged to have violated a state or municipal ordinance or regulation prohibiting possession or
32 use of any tobacco product;

33 (3) Involving any child who is alleged to have violated a state law or municipal
34 ordinance, or any person who is alleged to have violated a state law or municipal ordinance prior
35 to attaining the age of seventeen years, in which cases jurisdiction may be taken by the court of
36 the circuit in which the child or person resides or may be found or in which the violation is
37 alleged to have occurred; except that, the juvenile court shall not have jurisdiction over any child
38 fifteen and one-half years of age who is alleged to have violated a state or municipal traffic
39 ordinance or regulation, the violation of which does not constitute a felony, or any child who is
40 alleged to have violated a state or municipal ordinance or regulation prohibiting possession or
41 use of any tobacco product;

42 (4) For the adoption of a person;

43 (5) For the commitment of a child or person seventeen years of age to the guardianship
44 of the department of social services as provided by law;

45 **(6) For the paternity determination of a child or person seventeen years of age over**
46 **which the juvenile court already has jurisdiction pursuant to subdivision (1) of subsection**
47 **1 of this section. Such proceeding shall include a determination of child custody and child**
48 **support for such child or person;**

49 **(7) For the guardianship of a child or person seventeen years of age under the**
50 **jurisdiction of the juvenile court. Such guardianship shall include a permanent**
51 **guardianship, standby guardianship and planned long-term living arrangement with a**

52 permanent family. As used in this subdivision, the following terms mean:

53 (a) "Permanent guardianship", a guardianship that allows the guardian to serve
54 as a permanent caregiver to a child without ongoing state supervision based on the court's
55 determination that such a guardianship is in the best interest of the child. Such
56 guardianship:

57 a. Shall require a court finding by clear and convincing evidence that each parent's
58 neglect, abuse or incapacity is of such a serious nature as to demonstrate the parent's
59 permanent inability to provide for the child;

60 b. Shall provide the permanent guardian with legal custody and control of the
61 child, including the authority to make decisions concerning the child's care, education,
62 discipline and protection;

63 c. Shall prefer placement of the child with a relative;

64 d. May permit birth parents to have contact with the child and may require the
65 birth parents to pay child support;

66 e. Shall require the consent of any child twelve years of age or older;

67 f. Shall not be set aside except based on clear and convincing evidence that the
68 guardian has failed or is unable to provide proper care and custody of the child;

69 (b) "Planned long-term living arrangement with a permanent family", the
70 placement of a child with a specific and identified permanent family without the option of
71 the child returning to the child's family of origin. Such placement shall only be ordered:

72 a. For a child fourteen years of age or older who is in a stable foster care placement
73 that will last until the child leaves foster care or reaches the age of majority and who has
74 a documented, positive and ongoing relationship with his or her birth relatives; or

75 b. For a child with serious and profound physical, emotional or mental disabilities
76 who is in a long-term stable placement and it is unlikely that adequate services can be
77 guaranteed in a subsidized guardianship or adoptive placement;

78 (c) "Standby guardianship", a guardianship in which a chronically or terminally
79 ill parent authorizes a person eighteen years of age or older to serve as guardian of a child
80 when the parent dies or becomes temporarily or permanently incapacitated.

81 2. Transfer of a matter, proceeding, jurisdiction or supervision for a child or person
82 seventeen years of age who resides in a county of this state shall be made as follows:

83 (1) Prior to the filing of a petition and upon request of any party or at the discretion of
84 the juvenile officer, the matter in the interest of a child or person seventeen years of age may be
85 transferred by the juvenile officer, with the prior consent of the juvenile officer of the receiving
86 court, to the county of the child's residence or the residence of the person seventeen years of age
87 for future action;

88 (2) Upon the motion of any party or on its own motion prior to final disposition on the
89 pending matter, the court in which a proceeding is commenced may transfer the proceeding of
90 a child or person seventeen years of age to the court located in the county of the child's residence
91 or the residence of the person seventeen years of age, or the county in which the offense pursuant
92 to subdivision (3) of subsection 1 of this section is alleged to have occurred for further action;

93 (3) Upon motion of any party or on its own motion, the court in which jurisdiction has
94 been taken pursuant to subsection 1 of this section may at any time thereafter transfer jurisdiction
95 of a child or person seventeen years of age to the court located in the county of the child's
96 residence or the residence of the person seventeen years of age for further action with the prior
97 consent of the receiving court;

98 (4) Upon motion of any party or upon its own motion at any time following a judgment
99 of disposition or treatment pursuant to section 211.181, the court having jurisdiction of the cause
100 may place the child or person seventeen years of age under the supervision of another juvenile
101 court within or without the state pursuant to section 210.570, RSMo, with the consent of the
102 receiving court;

103 (5) Upon the transfer of any matter, proceeding, jurisdiction or supervision of a child or
104 person seventeen years of age, certified copies of all legal and social documents and records
105 pertaining to the case on file with the clerk of the transferring juvenile court shall accompany the
106 transfer.

107 3. In any proceeding involving any child or person seventeen years of age taken into
108 custody in a county other than the county of the child's residence or the residence of a person
109 seventeen years of age, the juvenile court of the county of the child's residence or the residence
110 of a person seventeen years of age shall be notified of such taking into custody within
111 seventy-two hours.

112 **4. Any dissolution of marriage action or motion to modify a judgment of dissolution**
113 **involving a child or children of the marriage subject to the jurisdiction of the juvenile court**
114 **pursuant to subdivision (1) of subsection 1 of this section may be automatically transferred**
115 **to the juvenile court having jurisdiction over such child or children to be heard in**
116 **conjunction with the juvenile court case.**

211.442. As used in sections 211.442 to 211.487, unless the context clearly indicates
2 otherwise, the following terms mean:

3 (1) "Child", an individual under eighteen years of age;

4 (2) "Minor", any person who has not attained the age of eighteen years;

5 (3) "Parent", a biological parent or parents of a child, as well as, the husband of a natural
6 mother at the time the child was conceived, or a parent or parents of a child by adoption,
7 including both the mother and the putative father of a child. The putative father of a child shall

8 have no legal relationship unless he, prior to the entry of a decree [under] **pursuant to** sections
9 211.442 to 211.487, has acknowledged the child as his own by affirmatively asserting his
10 paternity **as follows:**

11 **(a) Filing a notice of intent to claim paternity with the putative father registry**
12 **pursuant to section 192.016, RSMo, prior to the filing of a petition to terminate parental**
13 **rights;**

14 **(b) Filing an affidavit as voluntary acknowledgment of paternity with the bureau**
15 **of vital records pursuant to section 193.087, RSMo;**

16 **(c) Initiating a court proceeding to determine paternity prior to the filing of a**
17 **petition to terminate parental rights; or**

18 **(d) Placing his name as the father of the child on the child's birth certificate.**

211.447. 1. Any information that could justify the filing of a petition to terminate
2 parental rights may be referred to the juvenile officer by any person. The juvenile officer shall
3 make a preliminary inquiry and if it does not appear to the juvenile officer that a petition should
4 be filed, such officer shall so notify the informant in writing within thirty days of the referral.
5 Such notification shall include the reasons that the petition will not be filed. Thereupon, the
6 informant may bring the matter directly to the attention of the judge of the juvenile court by
7 presenting the information in writing, and if it appears to the judge that the information could
8 justify the filing of a petition, the judge may order the juvenile officer to take further action,
9 including making a further preliminary inquiry or filing a petition.

2. Except as provided for in subsection 3 of this section, a petition to terminate the
11 parental rights of the child's parent or parents shall be filed by the juvenile officer or the division,
12 or if such a petition has been filed by another party, the juvenile officer or the division shall seek
13 to be joined as a party to the petition, when:

14 (1) Information available to the juvenile officer or the division establishes that the child
15 has been in foster care for at least fifteen of the most recent twenty-two months; or

16 (2) A court of competent jurisdiction has determined the child to be an abandoned infant.
17 For purposes of this subdivision, an "infant" means any child one year of age or under at the time
18 of filing of the petition. The court may find that an infant has been abandoned if:

19 (a) The parent has left the child under circumstances that the identity of the child was
20 unknown and could not be ascertained, despite diligent searching, and the parent has not come
21 forward to claim the child; or

22 (b) The parent has, without good cause, left the child without any provision for parental
23 support [and] **or** without making arrangements to visit or communicate with the child, although
24 able to do so; or

25 (3) A court of competent jurisdiction has determined that the parent has:

- 26 (a) Committed murder of another child of the parent; or
27 (b) Committed voluntary manslaughter of another child of the parent; or
28 (c) Aided or abetted, attempted, conspired or solicited to commit such a murder or
29 voluntary manslaughter; or
30 (d) Committed a felony assault that resulted in serious bodily injury to the child or to
31 another child of the parent.
- 32 3. If grounds exist for termination of parental rights pursuant to subsection 2 of this
33 section, the juvenile officer or the division may, but is not required to, file a petition to terminate
34 the parental rights of the child's parent or parents if:
- 35 (1) The child is being cared for by a relative; or
36 (2) There exists a compelling reason for determining that filing such a petition would
37 not be in the best interest of the child, as documented in the permanency plan which shall be
38 made available for court review; or
39 (3) The family of the child has not been provided such services as provided for in section
40 211.183.
- 41 4. The juvenile officer or the division may file a petition to terminate the parental rights
42 of the child's parent when it appears that one or more of the following grounds for termination
43 exist:
- 44 (1) The child has been abandoned. For purposes of this subdivision a "child" means any
45 child over one year of age at the time of filing of the petition. The court shall find that the child
46 has been abandoned if, for a period of six months or longer:
- 47 (a) The parent has left the child under such circumstances that the identity of the child
48 was unknown and could not be ascertained, despite diligent searching, and the parent has not
49 come forward to claim the child; or
50 (b) The parent has, without good cause, left the child without any provision for parental
51 support [and] or without making arrangements to visit or communicate with the child, although
52 able to do so;
- 53 (2) The child has been abused or neglected. In determining whether to terminate parental
54 rights pursuant to this subdivision, the court shall consider and make findings on the following
55 conditions or acts of the parent:
- 56 (a) A mental condition which is shown by competent evidence either to be permanent
57 or such that there is no reasonable likelihood that the condition can be reversed and which
58 renders the parent unable to knowingly provide the child the necessary care, custody and control;
59 (b) Chemical dependency which prevents the parent from consistently providing the
60 necessary care, custody and control of the child and which cannot be treated so as to enable the
61 parent to consistently provide such care, custody and control;

62 (c) A severe act or recurrent acts of physical, emotional or sexual abuse toward the child
63 or any child in the family by the parent, including an act of incest, or by another under
64 circumstances that indicate that the parent knew or should have known that such acts were being
65 committed toward the child or any child in the family; or

66 (d) Repeated or continuous failure by the parent, although physically or financially able,
67 to provide the child with adequate food, clothing, shelter, or education as defined by law, or other
68 care and control necessary for the child's physical, mental, or emotional health and development;

69 (3) The child has been under the jurisdiction of the juvenile court for a period of one
70 year, and the court finds that the conditions which led to the assumption of jurisdiction still
71 persist, or conditions of a potentially harmful nature continue to exist, that there is little
72 likelihood that those conditions will be remedied at an early date so that the child can be returned
73 to the parent in the near future, or the continuation of the parent-child relationship greatly
74 diminishes the child's prospects for early integration into a stable and permanent home. In
75 determining whether to terminate parental rights under this subdivision, the court shall consider
76 and make findings on the following:

77 (a) The terms of a social service plan entered into by the parent and the division and the
78 extent to which the parties have made progress in complying with those terms;

79 (b) The success or failure of the efforts of the juvenile officer, the division or other
80 agency to aid the parent on a continuing basis in adjusting his circumstances or conduct to
81 provide a proper home for the child;

82 (c) A mental condition which is shown by competent evidence either to be permanent
83 or such that there is no reasonable likelihood that the condition can be reversed and which
84 renders the parent unable to knowingly provide the child the necessary care, custody and control;

85 (d) Chemical dependency which prevents the parent from consistently providing the
86 necessary care, custody and control over the child and which cannot be treated so as to enable
87 the parent to consistently provide such care, custody and control; or

88 (4) The parent has been found guilty or pled guilty to a felony violation of chapter 566,
89 RSMo, when the child or any child in the family was a victim, or a violation of section 568.020,
90 RSMo, when the child or any child in the family was a victim. As used in this subdivision, a
91 "child" means any person who was under eighteen years of age at the time of the crime and who
92 resided with such parent or was related within the third degree of consanguinity or affinity to
93 such parent; or

94 (5) The child was conceived and born as a result of an act of forcible rape. When the
95 biological father has pled guilty to, or is convicted of, the forcible rape of the birth mother, such
96 a plea or conviction shall be conclusive evidence supporting the termination of the biological
97 father's parental rights; or

(6) The parent is unfit to be a party to the parent and child relationship because of a consistent pattern of committing a specific abuse, including but not limited to, abuses as defined in section 455.010, RSMo, child abuse or drug abuse before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental or emotional needs of the child. It is presumed that a parent is unfit to be a party to the parent-child relationship upon a showing that within a three-year period immediately prior to the termination adjudication, the parent's parental rights to one or more other children were involuntarily terminated pursuant to subsection 2 or 3 of this section or subdivisions (1), (2), (3) or (4) of subsection 4 of this section or similar laws of other states.

5. The juvenile court may terminate the rights of a parent to a child upon a petition filed by the juvenile officer or the division, or in adoption cases, by a prospective parent, if the court finds that the termination is in the best interest of the child and when it appears by clear, cogent and convincing evidence that grounds exist for termination pursuant to subsection 2, 3 or 4 of this section.

6. When considering whether to terminate the parent-child relationship pursuant to subsection 2 or 3 of this section or subdivision (1), (2), (3) or (4) of subsection 4 of this section, the court shall evaluate and make findings on the following factors, when appropriate and applicable to the case:

(1) The emotional ties to the birth parent;

(2) The extent to which the parent has maintained regular visitation or other contact with the child;

(3) The extent of payment by the parent for the cost of care and maintenance of the child when financially able to do so including the time that the child is in the custody of the division or other child-placing agency;

(4) Whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent within an ascertainable period of time;

(5) The parent's disinterest in or lack of commitment to the child;

(6) The conviction of the parent of a felony offense that the court finds is of such a nature that the child will be deprived of a stable home for a period of years; provided, however, that incarceration in and of itself shall not be grounds for termination of parental rights;

(7) Deliberate acts of the parent or acts of another of which the parent knew or should have known that subjects the child to a substantial risk of physical or mental harm.

7. The court may attach little or no weight to infrequent visitations, communications, or contributions. It is irrelevant in a termination proceeding that the maintenance of the

134 parent-child relationship may serve as an inducement for the parent's rehabilitation.

135 8. In actions for adoption pursuant to chapter 453, RSMo, the court may hear and
136 determine the issues raised in a petition for adoption containing a prayer for termination of
137 parental rights filed with the same effect as a petition permitted pursuant to subsection 2, 3 or
138 4 of this section.